

APPENDIX Q

DECISION TREES FOR THE APPLICATION OF ENVIRONMENTAL AND LAND USE STATUTES

Local Ordinance and State Statute and Rule Applicability Guide for Land Use Projects

Note: These guide includes those land use-related state statutes that may be more commonly encountered during the review of development proposals by a municipal Code Enforcement Officer. For a more comprehensive listing of state statutes and rules, refer to the Zoning and Land Use Regulations manual.

Note: **Highlighted** items are attached in a decision tree that will guide the reader through a determination of the applicability of the statute.

Note: Other local ordinances that are not listed should be added as applicable.

1. Project is a division of land:

- Subdivision Ordinance or Regulations
- Zoning Ordinance or Minimum Lot Size Ordinance
- **Stormwater Management Law**
- **Site Location of Development Law**
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2. Project consists of new construction or reconstruction of existing structure:

- Zoning Ordinance
- Site Plan Review Ordinance
- Local Sewer/Water Connection Regulations
- Local Driveway Opening Ordinance or Regulations
- State Driveway Opening Permit for State and State-Aid Highways
- Local Historic Preservation Ordinance or Regulations
- Farmland Adjacency Act
- Erosion and Sediment Control Law
- **Site Location of Development Law**
- **Endangered Species Act**
- **Stormwater Management Law**
- Handicap Accessibility Statute
- Erosion and Sedimentation Control Law
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3. Project is on, over or at or adjacent to a water body, protected natural resource:

- Local Floodplain Management Ordinance
- **Shoreland Zoning**
- **Natural Resources Protection Act**
- **Endangered Species Act**
- Erosion and Sedimentation Control Law
- Submerged Lands Statute
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4. Project is a mobile home park:

- Local Mobile Home Park Ordinance
- Local Zoning Ordinance or Minimum Lot Size Ordinance
- Maine Manufactured Housing Board Regulations for Mobile Home Parks and Manufactured Housing Statute
- State Rules Relating to Drinking Water
- State Driveway Opening Permit for State and State-Aid Highways
- **Endangered Species Act**

- **Site Location of Development Law**
- Stormwater Management Law
- Erosion and Sedimentation Control Law
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5. Project includes a fuel storage tank:

- Local Groundwater Protection Ordinance
- **Fuel Storage Tank Regulations**
- Maine Hazardous Waste Management Rules
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6. Project includes generation, storage use, recycling, transfer or disposal of solid waste or residuals:

- Local Waste Disposal Ordinance
- **State Solid Waste Management Regulations**
- Maine Hazardous Waste Management Rules
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7. Project is a campground:

- Local Driveway Opening Ordinance or Regulations
- State Driveway Opening Permit for State and State-Aid Highways
- Zoning Ordinance
- Site Plan Review Ordinance
- State Rules Relating to Drinking Water
- **Stormwater Management Law**
- **Site Location of Development Law**
- **Endangered Species Act**
- Erosion and Sedimentation Control Law
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8. Project is a Gravel Pit or Mineral Extraction Operation:

- Local Groundwater Protection Ordinance
- Local Gravel Pit/Mineral Extraction Ordinance
- Local Driveway Opening Ordinance or Regulations
- State Driveway Opening Permit for State and State-Aid Highways
- **Stormwater Management Law**
- State Performance Standards for Excavations for Borrow, Clay, Topsoil or Silt
- State Performance Standards for Quarries
- State Regulations for Metallic Mineral Exploration, Advanced Exploration and Mining
- State Small Borrow Pit Statute
- Erosion and Sedimentation Control Law
- **State Solid Waste Management Rules**
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9. Project is an Automobile Graveyard, Junkyard or Automobile Recycling Business:

- Zoning Ordinance or Minimum Lot Size Ordinance
- Site Plan Review Ordinance
- **Stormwater Management Law**
- Local Driveway Opening Ordinance or Regulations
- State Driveway Opening Permit for State and State-Aid Highways

- State Junkyards and Automobile Graveyards Law
- Maine Hazardous Waste Management Rules
- Erosion and Sedimentation Control Law
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Natural Resources Protection Act Decision Tree

Definitions

Coastal sand dune systems. "Coastal sand dune systems" means sand deposits within a marine beach system, including, but not limited to, beach berms, frontal dunes, dune ridges, back dunes and other sand areas deposited by wave or wind action. Coastal sand dunes may extend into the coastal wetlands.

Coastal wetlands. "Coastal wetlands" means all tidal and subtidal lands, including all areas below any identifiable debris line left by tidal action; all areas with vegetation present that is tolerant of salt water and occurs primarily in a salt water or estuarine habitat; and any swamp, marsh, bog, beach, flat or other contiguous lowland which is subject to tidal action during the maximum spring tide level as identified in tide tables published by the National Ocean Service. Coastal wetlands may include portions of coastal sand dunes.

Forested wetland. "Forested wetland" means a freshwater wetland dominated by woody vegetation that is 6 meters tall, or taller.

Floodplain wetland. "Floodplain wetland" means lands adjacent to a river, stream or brook that are inundated with floodwater during a 100-year flood event and that under normal circumstances support a prevalence of wetland vegetation typically adapted for life in saturated soils.

Fragile mountain areas. "Fragile mountain areas" means areas above 2,700 feet in elevation from mean sea level.

Freshwater wetlands. "Freshwater wetlands" means freshwater swamps, marshes, bogs and similar areas that are:

1. Inundated or saturated by surface or groundwater at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils; and
2. Not considered part of a great pond, coastal wetland, river, stream or brook.

Great ponds. "Great ponds" means any inland bodies of water which in a natural state have a surface area in excess of 10 acres and any inland bodies of water artificially formed or increased which have a surface area in excess of 30 acres.

Protected natural resource. "Protected natural resource" means coastal sand dune system ,

coastal wetlands, significant wildlife habitat, fragile mountain areas, freshwater wetlands, great ponds or rivers, streams or brooks, as these terms are defined in this article.

River, stream or brook. "River, stream or brook" means a channel between defined banks. A channel is created by the action of surface water and has 2 or more of the following characteristics.

1. It is depicted as a solid or broken blue line on the most recent edition of the U.S. Geological Survey 7.5-minute series topographic map or, if that is not available, a 15-minute series topographic map.
2. It contains or is known to contain flowing water continuously for a period of at least 3 months of the year in most years.
3. The channel bed is primarily composed of mineral material such as sand and gravel, parent material or bedrock that has been deposited or scoured by water.
4. The channel contains aquatic animals such as fish, aquatic insects or mollusks in the water or, if no surface water is present, within the stream bed.
5. The channel contains aquatic vegetation and is essentially devoid of upland vegetation.

"River, stream or brook" does not mean a ditch or other drainage way constructed and maintained solely for the purpose of draining storm water or a grassy swale.

Significant wildlife habitat. "Significant wildlife habitat" means those areas listed by the Department of Inland Fisheries and Wildlife.

Natural Resources Protection Act Decision Tree

Note: MDEP is the final authority on the applicability of the Natural Resources Protection Act to individual projects. If there is any uncertainty on applicability, the project should be referred to MDEP.

- 1. Is the project located in, on, over or within 75 feet of a coastal or freshwater wetland, great pond, river, stream, brook, coastal sand dune, significant wildlife habitat or fragile mountain area?**

☐ No: NRPA permit not required ☐ Yes: Go to 2

- 2. Will the project involve disturbance of soil or vegetation, draining or dewatering, filling or adding material to a sand dune or other natural resource, or construction, repair or alteration of a structure?**

☐ No: NRPA permit not required ☐ Yes: Go to 3 or refer project to MDEP

- 3. Does the project involve maintenance and repair of a structure in, on, over or within 75 feet of a protected natural resource or maintenance and repair of a private crossing of a river, stream or brook?**

☐ No: Go to 4 ☐ Yes: Project may be exempt from NRPA permit; refer applicant to MDEP

- 4. Is the project limited to repair and maintenance of an existing road culvert or replacement of an existing culvert if the replacement culvert is not more than 25% longer than the culvert being replaced and is not longer than 75 feet?**

☐ No: Go to 5 ☐ Yes: Project is exempt from NRPA permit

- 5. Is the project limited to emergency repair or normal maintenance and repair of existing public works that affect a protected natural resource except an outstanding river segment as listed in 39 MRSA §480-P?**

☐ No: Go to 6 ☐ Yes: Project is exempt from NRPA permit if erosion control measures are employed to prevent sedimentation of any surface water, the project does not block fish passage in any water course and does not result in any additional intrusion of the public works into the protected natural resource.

- 6. Does the project involve normal maintenance and repair or reconstruction of existing access ways in freshwater or coastal wetlands to residential dwellings?**

☐ No: Go to 7 ☐ Yes: Project may be exempt from NRPA permit; refer applicant to MDEP

- 7. Does the project involve installation, removal or repair of a subsurface wastewater disposal system?**

☐ No: Go to 8 ☐ Yes: Project is exempt from NRPA permit if system complies with all requirements of the subsurface wastewater disposal rules adopted by the Department of Human Services under 22 MRSA §42-3

- 8. Does the project involve alteration of a wetland?**

☐ No: Go to 12 ☐ Yes: Go to 9

- 9. Does the project involve alteration of freshwater wetlands to cultivate cranberries or alteration of a freshwater, non-tidal stream to create an agricultural irrigation pond?**

☐ No: Go to 10 ☐ Yes: The project may qualify for a Cranberry General Permit (38 MRSA §480-U) or an Agricultural Irrigation Pond General Permit (38 MRSA §480-Y); refer applicant to MDEP

- 10. Does the project impact a coastal wetland or great pond or 4,300 s.f. or more of freshwater wetlands?**

- ☐ No: Project may be exempt from NRPA permit; ☐ Yes: A permit under the Wetland Protection Rules refer applicant to MDEP (38 MRSA §480-X and Chapter 310 of MDEP regulations) is required. A permit may also be required under the Federal Clean Water Act administered by the U.S. Army Corps of Engineers. Refer applicant to MDEP

11. Does the project involve a coastal sand dune?

- ☐ No. Go to 12 ☐ Yes: A permit under Chapter 355, Coastal Sand Dune may be required; refer applicant to MDEP

12. All other projects may require an NRPA permit unless they qualify for a Permit-by-Rule (Chapter 305 of MDEP Regulations). Refer applicant to MDEP.

Site Location of Development Law Decision Tree

Definitions

Borrow pit. "Borrow pit" means a mining operation undertaken primarily to extract and move sand, fill or gravel. Borrow pit does not include any mining operation undertaken primarily to extract or remove rock or clay.

Coastal wetlands. "Coastal wetlands" has the same meaning as in the Natural Resources Protection Act, 38 MRSA § 480-B.

Freshwater wetlands. "Freshwater wetlands" has the same meaning as in the Natural Resources Protection Act, 38 MRSA § 480-B.

Reclamation. "Reclamation" means the rehabilitation of the area of land affected by mining under a plan approved by MDEP, including, but not limited to, the stabilization of slopes and creation of safety benches, the planting of forests, the seeding of grasses and legumes for grazing purposes, the planting of crops for harvest and the enhancement of wildlife and aquatic resources, but not including the filling in of pits and the filling or sealing of shafts and underground workings with solid materials unless necessary for protection of ground water or safety.

River, stream or brook. "River, stream or brook" has the same meaning as in the Natural Resources Protection Act, 38 MRSA § 480-B.

Subdivision. A "subdivision" is the division of a parcel of land into 5 or more lots, other than lots for single-family, detached, residential housing, common areas or open space, to be offered for sale or lease to the general public during any 5-year period, if the aggregate land area includes more than 20 acres; or the division of a parcel of land into 15 or more lots for single-family, detached, residential housing, common areas or open space, to be offered for sale or lease to the general public within any 5-year period, if the aggregate land area includes more than 30 acres. The aggregate land area includes lots to be offered together with the roads, common areas, easement areas and all portions of the parcel of land in which rights or interests, whether express or implied, are to be offered

Structure. A "structure" means: buildings, parking lots, roads, paved areas, wharves or areas to be stripped or graded and not to be revegetated that cause a total project to occupy a ground area in excess of 3 acres. Stripped or graded areas that are not revegetated within a calendar year are included in calculating the 3-acre threshold.

Decision Tree

Note: Refer to 38 MRSA §488 for additional information on project applicability and exemptions under the Site Law.

Note: Certain structures and subdivisions regulated under the Site Law may be exempt from MDEP review if located within municipalities determined to have "municipal capacity" pursuant to 38 MRSA §488, sub§19 or authorized to substitute municipal permits for Site Law permits pursuant to 38 MRSA § 489-A, sub§1. (i.e. delegated authority).

Note: MDEP is the final authority on the applicability of the Site Law to individual projects. If there is any uncertainty on applicability, the project should be referred to MDEP.

1. Is the project a subdivision of land into lots?

☐ No:

☐ Yes: Go to 2

2. Will the lots be used for single-family residences or open space?

☐ No: Go to 6

☐ Yes: Go to 3

3. Will there be 15 or more lots with a combined area of 30 acres or more?

☐ No: Site Law does not apply

☐ Yes: Go to 4

4. Is the subdivision located in a municipality deemed to have "capacity?"

☐ No: Site Law Permit required; refer applicant to MDEP

☐ Yes: Go to 5

5. Is the combined area 100 acres or more?

☐ No: Site Law does not apply

☐ Yes: Site Law permit required; refer applicant to MDEP

6. Do buildings, parking lots, roads, paved areas, wharves and areas to be stripped and graded and not revegetated within a calendar year have a total area of 3 acres or more since October, 1975 or does the land or water area of the development exceed 20 acres?

☐ No: Go to 10

☐ Yes: go to 7

7. Is the subdivision located in a municipality deemed to have “capacity?”

☐ No: Site Law Permit required; refer applicant to MDEP

☐ Yes: Go to 8

8. Is the “structure area” (see question 6) equal to or exceeding 7 acres?

☐ No: Site Law does not apply

☐ Yes: Site Law permit required; refer applicant to MDEP

9. Will the structure be located in a commercial or industrial subdivision that received a Site Law permit?

☐ No: Go to 5

☐ Yes: Site Law permit may not be required; refer applicant to MDEP or go to 5

10. Will the development consist of new construction at a manufacturing facility that has previously received a Site Law permit?

☐ No: Go to 12

☐ Yes: Go to 11

11. Will the new construction result in additional disturbed area not to be revegetated that exceeds 30,000 sq. ft. ground area in any calendar year or 60,000 sq. ft. ground area in total since the Site Permit was originally obtained or was last modified by MDEP?

☐ No: Site Law permit not required;

☐ Yes: Site Law permit may be required; refer applicant to MDEP

12. All other project may require an NRPA permit unless they qualify for a Permit-by-Rule (Chapter 305 of MDEP Regulations). Refer applicant to MDEP.

Storm Water Management Law Decision Tree

Definitions

Disturbed area means all land areas that are stripped, graded, or grubbed at any time during the site preparation for, or construction of, a project unless the areas are returned to a condition with the same drainage patterns and vegetative cover type that existed prior to the disturbance. Both planting conducted to restore the previous cover type and restoration of any altered drainage patterns must occur within one year of disturbance.

"Same cover type" may include hydrologically improved cover type. For example, an area that was previously pasture may be replanted as forest.

"Disturbed area" does not include maintenance or redevelopment of an impervious area within the footprint of that impervious area, but does include new impervious areas. A natural or man-made body is not considered a disturbed area.

Impervious area means the total area of a parcel consisting of buildings and associated constructed facilities or areas that will be covered with a low-permeability material, such as asphalt or concrete, and areas such as gravel roads and unpaved parking areas that will be compacted through design or use to reduce their permeability. Common impervious areas include, but are not limited to, rooftops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, and macadam or other surfaces which similarly impede the natural infiltration of stormwater. A natural or man-made water body is not considered an impervious area.

Sensitive or threatened region or watershed means:

1. Direct watersheds of lakes other than those listed in Appendix A of Chapter 502 of MDEP Regulations;
2. For those projects that do not require a Site Law permit, those portions of river, stream or brook watersheds listed in Appendix B(2) that are located at or within 2 miles up-stream of a public water supply intake;
3. For those projects that require a Site Law permit, the watersheds of all rivers, streams and brooks not listed in Appendix B1; or
4. For those projects that require a Site Law permit, the watersheds of a freshwater wetland containing endangered or threatened species and not within the watershed of a "water body most at risk from new development".

Stormwater means the part of precipitation, including runoff from rain or melting ice and snow, that flows across the surface as sheet flow, shallow concentrated flow, or in natural or man-made drainageways.

Water body most at risk means those lakes, coastal wetlands or rivers, streams or brooks listed in Appendices A, B1 or C of Chapter 502 of MDEP Regulations.

Watershed means the land area that drains, via overland flow, natural or man-made drainage systems, water bodies, or wetlands to a given water body or wetland.

Decision Tree

Note: Refer to 38 MRS § 420-D and Chapters 500 and 502 of MDEP regulations for additional information on project applicability and exemptions under the Stormwater Management Law.

Note: MDEP is the final authority on the applicability of the Stormwater Management Law to individual projects. If there is any uncertainty on applicability, the project should be referred to MDEP.

1. **Does the project consist of impervious and disturbed areas associated with construction or expansion of a single family, detached residence?**

☐ No: Go to 2

☐ Yes Go to 3

2. **Does the development include at least 20,000 sq. ft. of impervious area or 5 acres of disturbed area in the direct watershed of a "water body most at risk" or at least 1 acre of impervious area or 5 acres of disturbed area elsewhere?**

☐ No: Stormwater Management Law permit not required

☐ Yes: Stormwater Management Law permit may be required; refer applicant to MDEP

3. **Does the project consist of disturbed areas of equal to or greater than 1 acre associated with the construction or expansion of a single family, detached residence?**

☐ No: Notice of Intent not required

☐ Yes: Notice of Intent may be required under the National Pollution Discharge Elimination System.

Endangered Species Decision Tree

Note: MDIFW is the final authority on the applicability of the Maine Endangered Species Act to individual projects. If there is any uncertainty on applicability, the project should be referred to MDIFW.

1. Is the project located in the vicinity of “essential habitat for species designated as endangered or threatened”? (See MDIFW Rules, Chapter 8.03, and Atlas of Essential Wildlife Habitats for Maine’s Endangered and Threatened Species.)

☐ No: MDIFW approval not required

☐ Yes: Refer applicant to MDIFW for preliminary review; go to 2

2. Does MDIFW confirm that the project is within an area of “essential habitat”?

☐ No: MDIFW approval not required

☐ Yes: MDIFW review and approval required before municipality may give final approval or issue any permit for project

Shoreland Zoning Decision Tree

Definitions

Expansion of a structure. “Expansion of a structure” means an increase in the floor area or volume of a structure, including all extensions such as, but not limited to attached: decks, garages, porches and greenhouses.

Expansion of use. “Expansion of use” means the addition of one or more months to a use's operating season; or the use of more floor area or ground area devoted to a particular use.

Floor area. “Floor area” means the sum of the horizontal areas of the floor(s) of a structure enclosed by exterior walls, plus the horizontal area of any unenclosed portions of a structure such as porches and decks.

Foundation. “Foundation” means the supporting substructure of a building or other structure including but not limited to basements, slabs, sills, posts or frostwalls.

Freshwater wetland. “Freshwater wetland” means freshwater swamps, marshes, bogs and similar areas, other than forested wetlands, which are:

1. Of ten or more contiguous acres; or of less than 10 contiguous acres and adjacent to a surface water body, excluding any river, stream or brook, such that in a natural state, the combined surface area is in excess of 10 acres; and
2. Inundated or saturated by surface or ground water at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils.

Freshwater wetlands may contain small stream channels or inclusions of land that do not conform to the criteria of this definition.

Great pond classified GPA. “Great pond classified GPA” means any great pond classified GPA, pursuant to Title 38 Article 4-A Section 465-A. This classification includes some, but not all impoundments of rivers that are defined as great ponds.

Market value. “Market value” means the estimated price a property will bring in the open market and under prevailing market conditions in a sale between a willing seller and a willing buyer, both conversant with the property and with prevailing general price levels.

Non-conforming lot. “Non-conforming lot” means a single lot of record which, at the effective date of adoption or amendment of this Ordinance, does not meet the area, frontage, or width requirements of the district in which it is located.

Non-conforming structure. “Non-conforming structure” means a structure which does not meet any one or more of the following dimensional requirements; setback, height, or lot coverage, but which is allowed solely because it was in lawful existence at the time this Ordinance or subsequent amendments took effect.

Non-conforming use. “Non-conforming use” means use of buildings, structures, premises, land or parts thereof which is not permitted in the district in which it is situated, but which is allowed to remain solely because it was in lawful existence at the time this Ordinance or subsequent amendments took effect.

River. “River” means a free-flowing body of water including its associated flood plain wetlands from that point at which it provides drainage for a watershed of twenty-five (25) square miles to its mouth.

Setback. “Setback” means the nearest horizontal distance from the normal high-water line to the nearest part of a structure, road, parking space or other regulated object or area.

Stream. “Stream” means a free-flowing body of water from the outlet of a great pond or the confluence of two (2) perennial streams as depicted on the most recent edition of a United States Geological Survey 7.5 minute series topographic map, or if not available, a 15-minute series topographic map, to the point where the body of water becomes a river or flows to another water body or wetland within the shoreland area.

Structure. “Structure” means anything built for the support, shelter or enclosure of persons, animals, goods or property of any kind, together with anything constructed or erected with a fixed location on or in the ground, exclusive of fences. The term includes structures temporarily or permanently located, such as decks and satellite dishes.

Decision Tree

Note: The following is based on the State of Maine Guidelines for Municipal Shoreland Zoning Ordinances. To the extent that individual provisions in an approved local ordinance vary from the guidelines, the local ordinance controls.

Note: Approval under NRPA may also be required.

Note: The following projects and situations are those most commonly encountered by a CEO and do not represent the entirety of circumstances covered by the Shoreland Zoning Guidelines or the municipal ordinance.

1. **Is the project proposed at a location within the municipality's shoreland zone (i.e., within 250 feet of a great pond, river, coastal wetland, freshwater wetland (excluding forested wetland) or tidal water or 75 feet of a stream)?**
☐ No: Shoreland Zoning permit not required ☐ Yes: Record the shoreland district the project is proposed for and go to 2
2. **Does the project involve a non-conforming structure, use or lot?**
☐ No: Go to 14 ☐ Yes: Approval of the CEO or Planning Board required and must comply with applicable land use standards; go to 3
3. **Does the project involve a non-conforming structure that is closer than 100 feet to a great pond or a river flowing to a great pond or closer than 75 feet to a freshwater wetland, coastal wetland, tidal water, other river or a stream?**
☐ No: Go to 8 ☐ Yes: Non-conforming portion of structure cannot be expanded by 30% or more in floor area or volume and structure cannot be expanded closer to shoreline; go to 4
4. **Is the structure proposed to be relocated on the lot?**
☐ No: Go to 5 ☐ Yes: Relocated structure must meet shoreline setback to the greatest practical extent as determined by the planning board and the applicant must demonstrate that septic system meets Subsurface Wastewater Disposal Rules or that a new system can be installed in compliance with the rules; go to 5
5. **Has the structure been removed, damaged or destroyed by more than 50% of its market value?**
☐ No: Go to 6 ☐ Yes: Reconstructed structure must meet the shoreline setback to the greatest practical extent as determined by the planning board which shall also consider the physical condition and type of present, if any; go to 6
6. **Is a foundation for the structure to be constructed or enlarged?**
☐ No: Go to 8 ☐ Yes: New or enlarged foundation must meet the shoreline setback to the greatest practical extent as determined by the planning board; go to 7
7. **Will the foundation extend beyond the exterior dimensions of the structure or cause the structure to be elevated by more than 3 additional feet?**
☐ No: Go to 8 ☐ Yes: The new or enlarged foundation is considered an expansion of the structure; go to 8
8. **Is the current use of the structure proposed to be changed?**
☐ No: Go to 9 ☐ Yes: Applicant must demonstrate to planning board that new use will have no greater adverse impact on water body or wetland or on the subject or adjacent properties and resources than existing use; go to 9

9. Does the project involve an expansion of a non-conforming use?

- ☐ No: Go to 10
- ☐ Yes: Expansions of non-conforming uses are limited to residential uses which may be expanded within existing residential structure or within expansions of such structure with planning board approval pursuant to provisions for expansion of non-conforming structures; go to 10

10. Does the project involve a resumption of a non-conforming residential use?

- ☐ No: Go to 11
- ☐ Yes: A non-conforming residential use can be resumed if the structure has been used or maintained for residential use within the preceding 5 year period; go to 13

11. Does the project involve resumption of a non-conforming, non-residential use?

- ☐ No: Go to 12
- ☐ Yes: A non-conforming, non-residential use can be resumed within one year of discontinuance or within two years with planning board approval; go to 13

12. Does the project involve a change from one non-conforming use to another non-conforming use?

- ☐ No: Go to 13
- ☐ Yes: Applicant must demonstrate to planning board that new use will have no greater adverse impact on a water body or wetland or on the subject or adjacent properties and resources, including water dependent uses in the CFMA district, than the former use; go to 13

13. Does the project involve a non-conforming lot?

- ☐ No: Go to 14
- ☐ Yes: See local ordinance for provisions on non-conforming lots; go to 14

14. Is the proposed activity listed as a “prohibited” use in the shoreland zoning district in which it is to be located?

- ☐ No: Go to 15
- ☐ Yes: Activity not allowed

15. Is the proposed activity listed as an “allowed” use in the shoreland zone?

- ☐ No: Go to 16
- ☐ Yes: Shoreland Zoning permit not required but activity must comply with erosion control standards and applicable land use standards of the local ordinance standards of the local ordinance

16. Is the project listed as an activity that requires a permit?

- ☐ No: Applicant should discuss project with CEO to confirm that permit not required
- ☐ Yes: Consult the land use standards governing the activity. The following checklist should be used to identify all that may apply. Standard procedures should then be followed for review and issuance of the permit by the planning board, CEO and/or LPI. The activity must comply with erosion control standards and other applicable land use standards of the local ordinance.

Solid Waste Decision Tree

Definitions

DEP/AQC. Department of Environmental Protection, Bureau of Air Quality Control.

DEP/SWFR. Department of Environmental Protection, Bureau of Remediation and Waste Management, Division of Solid Waste Facilities Regulation.

Boundary, solid waste. "Solid waste boundary" means the outermost limit of the solid waste (projected on a horizontal plane) as it would exist at completion of the Department or Board approved waste facility, or the outermost limit of the solid waste at any exempted waste facility.

Construction/Demolition Debris. "Construction/demolition debris" means debris resulting from construction, remodeling, repair, and demolition of structures. It includes but is not limited to building materials, asphalt, wall board, pipes, metal conduits, mattresses, household furniture, fish nets, rope, hose, wire and cable, fencing, carpeting and underlay; it excludes asbestos and other special wastes.

Incineration. "Incineration" means the volume reduction of solid waste by means of controlled combustion. This term does not include cone burners or the practice of open burning.

Inert Fill. "Inert Fill" means clean soil material, rocks, bricks, and cured concrete, which are not mixed with other solid or liquid waste, and which are not derived from an ore mining activity.

Land Clearing Debris. "Land Clearing Debris" means solid wastes resulting from the clearing of land and consisting solely of brush, stumps, soil material, and rocks.

Putrescible Waste. "Putrescible waste" means solid waste that contains organic matter capable of being decomposed by microorganisms and of such a character and proportion as to be capable of attracting or providing food for birds and other animals.

Recycling. "Recycling" means the separating, collecting, and/or reprocessing of manufactured materials or residues for reuse either in the same form or as part of a different product.

Residual. "Residual" means those materials (including but not limited to pulp and paper mill wastewater treatment plant sludge, food and fiber processing wastes, municipal wastewater and sludges, vegetable and fish processing residuals, and ash from wood boilers) generated from municipal, commercial or industrial facilities that are suitable for controlled land application and result in vegetative assimilation, attenuation of the components in the material or improved soil condition.

Solid Waste. "Solid waste" as defined in 38 M.R.S.A. Section 1303 (10) means useless, unwanted or discarded solid material with insufficient liquid content to be free flowing, including by way of example, and not by limitation, rubbish, garbage, refuse derived fuel, scrap materials, junk, refuse, inert fill material, and landscape refuse, but shall not include septic tank sludge, or agricultural wastes.

The fact that a solid waste, or a part or constituent of the waste, may have value or other use or may be sold or exchanged does not exclude it from the definition of "solid waste."

The term includes any residue or material which exists in excess to the owner at the time of such discard or rejection.

Tires. "Tires" means any used, scrap or otherwise discarded rubberized vehicle tires, including whole tires as well as the products derived from the processing of whole tires which may include, but not be limited to, shredded or chipped tires or crumb rubber. The fact that tire products as defined above may have value or other use or may be sold or exchanged shall not exclude it from the definition of solid waste.

Utilization. "Utilization" means the controlled land application of sludge or residuals at a rate commensurate with the nutritional needs of the crop to be grown and the assimilative capacity of the soil, usually requiring harvesting of the crop to compensate for the added nutrients. Some utilization programs may also have the improvement of soil conditions as a primary goal.

Vegetative Wastes. "Vegetative Wastes" means wastes consisting of plant matter from farms, homes, plant nurseries, and greenhouses. These shall include plant stalks, hulls, leaves, and tree waste processed through a wood chipper.

Waste Facility. "Waste facility" as defined in 38 M.R.S.A. Section 1303 (14) means any land area, structure, location, equipment or combination of them, including dumps, used for handling hazardous or solid waste, sludge or septage. A land area or structure shall not become a waste facility solely because:

- Woodwastes.** "Woodwastes" means brush, stumps, lumber, bark, woodchips, shavings, slabs, edgings, slash, and sawdust, which are not mixed with other solid or liquid waste.

1. Does the project involve changes to a DEP licensed solid waste facility?

☐ Yes: Refer to DEP/SWFR

☐ Yes: Go to 3

☐ Yes: Exempt

☐ Yes: Go to 5

☐ Yes: Refer to DEP/AQC☐ Yes: Exempt☐ Yes: Exempt☐ Yes: Refer to DEP/SWFR

☐ Yes: Refer to DEP/SWFR

☐ Yes: Exempt

☐ Yes: Refer to DEP/SWFR

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☐ No: Go to 13

☐ Yes: Refer to DEP/SWFR

13. Is the project an automobile dismantling and salvage operation that is subject to 30-A MRSA 3751-3760?

☐ No: Go to 14

☐ Yes: Exempt; refer to municipality

14. Does the facility process, reduce the volume or change the physical characteristics of solid waste?

☐ No: Exempt

☐ Yes: Go to 15.

15. Does the facility consist of: an indoor compactor, baler or shredder at an industrial plant; the processing or utilization of pre-separated clean scrap materials or; the recycling of solid materials that have been separated from other solid waste prior to receipt?

☐ No: Refer to DEP/SWFR

☐ Yes: Exempt

Fuel Storage Tank Decision Tree

1. Will 10% or more of tank be installed below ground?

☐ No: Aboveground storage tank – installation and equipment regulated by State Fire Marshall (Rules and Regulations for Flammable and Combustible Liquids) and Oil and Solid Fuel Board (Chapters 100-200); go to 2

☐ Yes: Underground storage tank; installation and equipment regulated by MDEP Chapter 691 (Regulations for Registration, Installation, Operation and Closure of Underground Oil Storage Tank Facilities) and Oil and Solid Fuel Board (Chapters 100-200) and by State Fire Marshall (Rules and Regulations for Flammable and Combustible Liquids); go to 3

2. Does aboveground fuel storage exceed 660 gallons in a single tank or 1,320 gallons in total?

☐ No: Not regulated by USEPA

☐ Yes: Spill Prevention, Control and Countermeasures (SPCC) Plan required by USEPA – see 40 CFR Part 112; go to 4

3. Does total below ground tank fuel storage exceed 42,000 gallons?

☐ No: Not regulated by USEPA

☐ Yes: Spill Prevention, Control and Countermeasures (SPCC) Plan required by USEPA – see 40 CFR Part 112; go to 4

4. Is total fuel storage 63,000 gallons or larger?

☐ No: Not regulated under the Site Law

☐ Yes: Regulated under the Site Law as an “Oil Terminal Facility” – see 38 MRSA §§ 481-490